



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RENAISSANCE HOSPITAL
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Respondent Name

SECURITY NATIONAL INSURANCE COMPANY

Carrier's Austin Representative Box

Box Number 17

MFDR Tracking Number

M4-07-3301-01

MFDR Date Received

January 24, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "...the fair and reasonable reimbursement amount for this hospital outpatient admission should be commensurate with the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as this admission for those admissions involving the same Principal Diagnosis Code and Principal Procedure Code."

Amount in Dispute: \$17,606.03

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The reimbursement amount in this case was based on Concentra's outpatient formulary. Charges for the facility in which the provider elected to have procedures or surgery performed on an outpatient basis are paid at a fair and reasonable amount pursuant to the criteria set forth in Section 413.011(b) of the Texas Workers' Compensation Act. In light of the reduced expenses incurred in an outpatient setting, it is unreasonable to pay more for an outpatient procedure than an inpatient one. The established per diem rate for an inpatient surgery day is set at \$1,118.00. Per diem for a non-surgical inpatient is set at \$870. Utilizing these two rates as anchor points, reimbursement is determined based on the amount of time spent in the operating room."

Response Submitted by: Unitrin, 12790 Merit Drive, Dallas, Texas 75251

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 23, 2006 to January 24, 2006	Outpatient Services	\$17,606.03	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(c), effective May 16, 2002, 27 *Texas Register* 4047 requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, §413.011 until such period that specific fee guidelines are established by the commission."
3. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
4. U.S. Bankruptcy Judge Michael Lynn issued a "STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS," dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers' compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor's estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer's behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.
5. By letter dated August 2, 2011, the attorney for the requestor provided *REQUESTOR'S AMENDED POSITION STATEMENT (RENAISSANCE HOSPITAL – DALLAS)* that specified, in pertinent parts, an "Additional Reimbursement Amount Owed" of \$269.13 and an "alternative" "Additional Reimbursement Amount Owed" of \$7,610.12. The Division notes that the amount in dispute of \$17,606.03 specified above is the original amount in dispute as indicated in the requestor's original *RENAISSANCE HOSPITAL MDR POSITION STATEMENT*, submitted with the request for medical fee dispute resolution, prior to the *REQUESTOR'S AMENDED POSITION STATEMENT*.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - W10 – Contractual adjustment. \$0.00
 - W10 – Payment denied/reduced because the payer deems the information submitted does not support this level of service, this many services, this length of service, this dosage, or this day's supply.
 - \$0.00
 - \$1,100.00
 - \$3,828.00
 - 850-054 - THE RECOMMENDED PAYMENTS ABOVE REFLECT A FAIR, REASONABLE AND CONSISTENT METHODOLOGY OR REIMBURSEMENT PURSUANT TO THE CRITERIA SET FORTH IN SECTION 413.011(D) OF THE TEXAS WORKERS' COMPENSATION ACT.
 - M – NO MAR \$0.00
 - M – NO MAR \$1,100.00
 - M – NO MAR \$3,828.00
 - W4 – No additional reimbursement allowed after review of appeal/reconsideration.
 - 920-002 – IN RESPONSE TO A PROVIDER INQUIRY, WE HAVE RE-ANALYZED THIS BILL AND ARRIVED AT THE SAME RECOMMENDED ALLOWANCE.

Findings

1. Former 28 Texas Administrative Code §133.307(c)(1), effective December 31, 2006, 31 *Texas Register* 10314, states: "Timeliness. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request. (A) A request for medical fee dispute resolution that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute." The request for dispute resolution of services rendered on dates of January 23, 2006 through January 24, 2006 was received by the Division on January 24, 2007. This date is later than one year after the initial date of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307, subparagraph (B). The Division concludes that the requestor has failed to timely file the request for dispute resolution of these services with the Division's MDR Section; consequently, the requestor has waived the right to medical fee dispute resolution for these services. Therefore, service date January 23, 2006 will not

be considered in this review. However, the Division concludes that the request for dispute resolution of services rendered on January 24, 2006 was submitted in accordance with the timely filing requirements of §133.307(c); therefore, the services rendered on January 24, 2006 will be considered in this review. Review of the submitted itemized statement finds that the services eligible for review include amlodipine besylate Tab 5, billed under revenue code 259 in the amount of \$14.23, and 15 hours of observation, procedure code 99218, billed under revenue code 762 in the amount of \$4,050.00.

2. The insurance carrier reduced or denied disputed services with reason code W10 – “Contractual adjustment. \$0.00.” Review of the submitted information found no documentation to support that the disputed services were subject to a contractual agreement between the parties to this dispute. Nevertheless, on March 7, 2012, the Division requested the respondent to provide a copy of the referenced contract(s) between the health care provider and the alleged network as well as the insurance carrier and the network pursuant to former 28 Texas Administrative Code §133.307(e)(1), effective December 31, 2006, 31 *Texas Register* 10314, which states that “The Division may request additional information from either party to review the medical fee issues in dispute. The additional information must be received by the Division no later than 14 days after receipt of this request. If the Division does not receive the requested additional information within 14 days after receipt of the request, then the Division may base its decision on the information available.” Attorney Jeremy Lord, of the law firm Flahive, Ogden & Latson, replied by letter dated March 22, 2012, on behalf of the respondent, that “The carrier did not reduce the provider’s bill based upon the existence of a contract. The carrier will investigate to determine whether a contract did exist between the carrier and a network, or between the provider and a network, and furnish a copy of the contract if one exists. At the same time, the carrier does not understand the role off the contract in this dispute since the carrier did not assert a reduction in the reimbursement amount based on the existence of a contract.” No further information has been received from the respondent; therefore, this decision is based on the information available at the time of this review. The respondent has not otherwise submitted documentation to support that the services in dispute are subject to a contractual adjustment. The above denial/reduction reason is not supported. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.
3. 28 Texas Administrative Code §133.307(c)(2)(C), effective December 31, 2006, 31 *Texas Register* 10314, applicable to disputes filed on or after January 15, 2007, requires that the request shall include “the form DWC-60 table listing the specific disputed health care and charges in the form and manner prescribed by the Division.” Review of the Table of Disputed Services finds that the requestor has not listed any of the amounts in dispute or a total amount in dispute in the designated column. The requestor has therefore failed to complete the required sections of the request in the form and manner prescribed under §133.307(c)(2)(C). For the purposes of this review, the Division will deem the amount in dispute to be the amount of \$17,606.03 indicated in the original *RENAISSANCE HOSPITAL MDR POSITION STATEMENT* that was submitted with the request for medical fee dispute resolution.
4. 28 Texas Administrative Code §133.307(c)(2)(G), effective December 31, 2006, 31 *Texas Register* 10314, applicable to disputes filed on or after January 15, 2007, requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable.” Review of the submitted documentation finds that:
 - The requestor’s amended position statement asserts that “the fair and reasonable reimbursement amount for this hospital outpatient admission should at least be commensurate with the average amount paid by all insurance carriers in the Texas workers’ compensation system in the same year as this admission for those admissions involving the same Principal Diagnosis Code and Principal Procedure Code.”
 - In support of the requested reimbursement methodology the requestor states that “Ordering additional reimbursement based on the average amount paid system-wide in Texas achieves effective medical cost control because it prevents overpayment... creates an expectation of fair reimbursement; and... encourages health care providers to continue to offer quality medical care to injured employees... Ordering additional reimbursement for at least the average amount paid for a hospital outpatient admission during the same year of service and involving the same Principal Diagnosis Code and Principal Procedure Code ensures that similar procedures provided in similar circumstances receive similar reimbursement... The average amount paid for similar admissions as put forward by the Requestor is based on a study of data maintained by the Division.”
 - The above proposed methodology is based on reimbursement of the entire admission. In the current dispute, only the observation and pharmaceutical services rendered on January 24, 2006 are eligible for review. The proposed methodology does not address or contemplate the severability of individual services from the entire admission. Therefore, reimbursement of only a portion of the services involved in the admission based on the average amount paid system-wide in Texas would not achieve the above stated goals of preventing overpayment or of ensuring that similar procedures provided in similar circumstances receive similar reimbursement. Such a methodology cannot be favorably considered when no other data or

documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services considered for review.

- The requestor did not submit documentation to support that payment of the amount sought is a fair and reasonable rate of reimbursement for the services in dispute.
- The requestor did not support that payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement of 269.13 is not supported. The requestor has not demonstrated or presented documentation to support that the additional amount sought is a fair and reasonable rate of reimbursement for the services considered in this review.

5. In the alternative, the requestor proposes that “it is also justifiable to order as much in additional reimbursement as is owed under the Hospital Facility Fee Guidelines – Outpatient because the Division’s new fee guidelines, while not in effect at that time, are presumptively fair and reasonable reimbursement under the law and data from the Medicare Outpatient Prospective Payment System for these dates of service is still available for calculating the amount due.” Review of the submitted documentation finds that:
- In support of the alternative requested reimbursement methodology the requestor states that “The data necessary to calculate the Maximum Allowable Reimbursement is readily available from the Medicare Outpatient Prospective Payment System. Therefore, the new fee guidelines as adopted in 28 TEX. ADMIN. CODE § 134.403 provide a presumptive measure for the fair and reasonable reimbursement amount.”
 - The requestor did not submit documentation to support the Medicare payment calculation for the services in dispute.
 - The fee guidelines as adopted in 28 Texas Administrative Code §134.403 were not in effect during the time period when the disputed services were rendered.
 - The Division disagrees that the fee guidelines as set forth in §134.403 are “presumptively fair and reasonable reimbursement under the law” for dates of service prior to the date the rule became effective. No documentation was found to support such a presumption under law.
 - While the Division has previously found that Medicare patients are of an equivalent standard of living to workers’ compensation patients (22 *Texas Register* 6284), Texas Labor Code §413.011(b) requires that “In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d)... This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services.”
 - The requestor did not discuss or present documentation to support how applying the proposed payment adjustment factors as adopted in 28 Texas Administrative Code §134.403, effective for dates of service on or after March 1st, 2008, would provide fair and reasonable reimbursement for the disputed services during the time period that treatment was rendered to the injured worker.
 - The Division notes that the observation and pharmaceutical services subject to dispute are not separately reimbursed in the Medicare Outpatient Prospective Payment System. These services are considered packaged services; payment for these services is included in the payment for the primary procedures. As Medicare does not establish a fee for these services in an outpatient hospital setting, no reimbursement can be calculated applying the above methodology.
 - The requestor did not submit nationally recognized published studies, published Division medical dispute decisions, or documentation of values assigned for services involving similar work and resource commitments to support the alternative requested reimbursement.
 - The requestor did not support that the requested alternative reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for the alternative additional amount of \$7,160.12 is not supported. The requestor has not demonstrated or presented sufficient documentation to support that the alternative additional amount requested would provide a fair and reasonable rate of reimbursement for the services in dispute.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amounts sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to additional reimbursement for the services involved in this dispute.

Authorized Signature

_____	Grayson Richardson	February 4, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.